

APPEAL NO. 010846
FILED JUNE 7, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 22, 2001. The hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to her cervical area. The claimant has appealed on sufficiency of the evidence grounds. The respondent (self-insured) has filed a reply urging our affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include her cervical area. The parties stipulated that the claimant sustained a right shoulder injury on that date. The claimant contended that she also injured her neck in the incident which involved picking up a box of telephones from the floor and placing it on a table, and that both Dr. A and Dr. B agreed with her. She stated that she reported neck pain, in addition to right shoulder pain, to her supervisor soon after the incident. The hearing officer's discussion notes that evidence of a neck injury does not appear in the medical records until _____, expresses concern with certain inconsistencies in the claimant's evidence, and indicates that the hearing officer did not find the claimant's evidence credible and sufficient to meet her burden of proof. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, as appellate-reviewing tribunal, will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge